

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF DELAWARE

Civil Action No. \_\_\_\_\_

UNITED STATES OF AMERICA, )

Plaintiff, )

STATE OF UTAH, and )  
STATE OF TENNESSEE, )

Plaintiff-Interveners, )

vs. )

WAL-MART STORES, INC., )

Defendant. )

\_\_\_\_\_ )

CONSENT DECREE

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Appendix 1: Inspection Report Form

A. Whereas, the United States of America, on behalf of the United States Environmental Protection Agency (“EPA”), has filed the Complaint in this matter alleging that Wal-Mart Stores, Inc. (“Wal-Mart”) has violated the Clean Water Act, 33 U.S.C. §§ 1251-1331 and the regulations promulgated pursuant to that statute, including the conditions and limitations of the Federal General Permit, the California General Permit, the Colorado General Permit, the Delaware General Permit, the Michigan General Permit, the New Jersey General Permit, the South Dakota General Permit, the Texas General Permit, the Tennessee General Permit, and the Utah General Permit.

B. Whereas, the States of Utah and Tennessee have filed complaints in intervention alleging violations of the Utah General Permit and the Tennessee General Permit (the “Complaints in Intervention”).

C. Whereas Wal-Mart neither admits nor denies the allegations in the Complaint and the Complaints in Intervention, and nothing in this Decree shall constitute or be construed as an admission of liability, fact or law, or of any wrongdoing on the part of Wal-Mart.

D. Whereas, the Plaintiffs and Wal-Mart have consented to the entry of this Decree without trial of any issues.

E. Whereas, Wal-Mart intends to invite EPA to attend its annual seminars and other meetings under this Decree;

F. Whereas, the parties recognize, and this Court finds by entering this Consent Decree, that the parties have negotiated this Consent Decree in good faith, that implementation of the Consent Decree will avoid prolonged and complicated litigation between the parties, and that it is fair, reasonable, and in the public interest;

NOW, THEREFORE, before the taking of any testimony, upon the pleadings, without adjudication or admission of any issue of fact or law and upon consent and agreement of the parties, it is hereby ORDERED, DECREED, and ADJUDGED as follows:

## I. DEFINITIONS

1. Definitions. Except as specifically provided in this Decree, definitions for the terms used in this Decree shall be incorporated from the Clean Water Act and the regulations promulgated pursuant to that Act. Whenever terms listed below are used in this Decree the following definitions apply:

- a. BMPs - best management practices, means schedules of activities, prohibitions of practices, maintenance procedures, and other management practices to prevent or reduce the discharge of pollutants to waters of the United States as well as treatment requirements, operating procedures, and practices to control plant site runoff, spillage or leaks, sludge or waste disposal, or drainage from raw material storage.
- b. Business Day - any day other than a Saturday, Sunday, or federal holiday.
- c. California General Permit - California Construction Storm Water General Permit, NPDES No. CAS000002.
- d. Clean Water Act - the Federal Water Pollution Control Act, as amended, 33 U.S.C. §§ 1251 - 1387.
- e. Colorado General Permit - Colorado General Permit for Storm Water Discharges associated with Construction Activity No. COR- 030000.
- f. Delaware General Permit - the Delaware Sediment and Stormwater Regulations, Section 9, subsection 1, part 2.
- g. Federal General Permit - Construction Storm Water General Permits of September 9, 1992 (57 Fed. Reg. 41217 – 41226), February 17, 1998 (63 Fed. Reg. 7858 - 7920), and July 6, 1998 (63 Fed. Reg. 36489 - 36519).
- h. Michigan General Permit - Michigan Permit-By-Rule for Construction Activities No. MIR105273.
- i. New Jersey General Permit - New Jersey General Permit for Construction and Mining Activity, General Stormwater Permit No. NJG0088323.

- j. Notice of Intent - a request for coverage under a Permit.
- k. Permit - the permits issued by EPA and published on September 9, 1992 (57 Fed. Reg. 41217 – 41226), February 17, 1998 (63 Fed. Reg. 7858 - 7920), July 6, 1998 (63 Fed. Reg. 36489 - 36519), and July 1, 2003 (68 Fed. Reg. 39087 - 39091) and any amendments thereto, or, any permit governing storm water discharges from construction activities issued by a state authorized pursuant to 33 U.S.C. § 1342(b) and the regulations implementing that provision.
  - l. Require – shall mean to impose an obligation in the contract between Wal-Mart and its Responsible Contractor and to enforce such contractual obligations as necessary and appropriate to ensure that each Responsible Contractor fully and timely meets the requirements imposed in the contract pursuant to this decree and to prevent a pattern of non-compliance with such requirements by the Responsible Contractor.
  - m. Responsible Contractor - the general contractor charged with the supervision or completion of construction at a Site. If there is no general contractor for a Site, the Responsible Contractor shall be each contractor retained by Wal-Mart responsible for ground-disturbing activities at the Site.
  - n. Plaintiffs - the United States of America, the State of Tennessee, and the State of Utah.
  - o. Responsible Official - an official of Wal-Mart who is in charge of a principal business function, or any other person who performs similar policy or decision making functions for Wal-Mart and is authorized as set forth at 40 C.F.R. § 122.22.
  - p. Site - any location in the United States for which Wal-Mart or a Wal-Mart contractor either (i) has operational control over construction plans and specifications, including the ability to make modifications to those plans and specifications or (ii) has day-to-day operational control of those activities at a project which are necessary to ensure compliance with a SWPPP for the site or other permit conditions (e.g., they are

authorized to direct workers at a site to carry out activities required by the SWPPP or to comply with other Permit conditions) and at which there is or will be construction resulting in ground-disturbing activities greater than or equal to one acre or which is otherwise subject to the NPDES storm water construction regulations set forth at 40 C.F.R. 122.26(b)(14)(x) or 40 C.F.R. 122.26(b)(15). The term Site shall not include joint development construction sites for which Wal-Mart or a Wal-Mart contractor does not (i) have operational control over construction plans and specifications, including the ability to make modifications to those plans and specifications or (ii) have day-to-day operational control of those activities at a project which are necessary to ensure compliance with a SWPPP for the site or other permit conditions (e.g., they are authorized to direct workers at a site to carry out activities required by the SWPPP or to comply with other Permit conditions). Except as expressly provided in Paragraph 11 (Notice to Plaintiffs of Construction Projects), the term Site shall not include Wal-Mart distribution centers.

q. South Dakota General Permit - South Dakota Storm Water General Permit for Construction Activities Permit No. SDR-10####.

r. Storm Water Professional - an individual who is currently certified by (1) CPSEC, Inc. under the Certified Professional in Erosion & Sediment Control program, (2) any certification or training program approved, sponsored or identified in storm water program outreach materials provided by a state authorized to implement the storm water program pursuant to 33 U.S.C. § 1342(b), (3) a storm water certification program provided by any other organization approved by EPA, or (4) a storm water training program provided by Wal-Mart pursuant to a training plan approved by EPA pursuant to Paragraph 9 (Training Program).

- s. SWPPP - shall mean a Storm Water Pollution Prevention Plan or other plan for controlling pollutants in storm water discharges from Sites that meets the requirements of Paragraph 7 (SWPPPs)
- t. Tennessee General Permit - Tennessee General Permit No. TNR10-0000 for Storm Water from Construction Activities.
- u. Texas General Permit - Texas Storm Water Construction General Permit No. TXR10QG20.
- v. Utah General Permit - Utah Storm Water General Permit for Construction Activities Permit No. UTR10000.
- w. Wal-Mart - Wal-Mart Stores, Inc. and its successors and assigns, as well as any subsidiaries or affiliated companies of Wal-Mart responsible for the real estate or construction activities at any Site.

## II. WAL-MART'S COMPLIANCE PROGRAM

2. Compliance with the Permit. At each Site, Wal-Mart shall comply with the terms of the applicable Permit and shall require its Responsible Contractor to comply with the terms of the applicable Permit, including installation and maintenance of BMPs pursuant to Sections II and III of this Decree and the applicable Permit.

3. Designation of Wal-Mart's Director of Storm Water Compliance. Within 5 days of entry of this Decree, Wal-Mart shall submit in writing a notice to Plaintiffs identifying a coordinator, manager, director, or other employee of Wal-Mart as its Director of Storm Water Compliance who will be responsible for coordinating oversight of storm water compliance by Wal-Mart and its Responsible Contractors at each Site. The Director of Storm Water Compliance shall (i) be a Storm Water Professional; (ii) have at least 5 years of construction-related experience; and (iii) be able to adequately identify and implement storm water sediment and erosion control practices and effectively instruct employees and contractors in the implementation of such practices; provided, however, that the initial Director of Storm Water



Compliance identified by Wal-Mart shall have 180 days to either maintain or achieve any necessary certification. The Director of Storm Water Compliance shall maintain his or her status as a Storm Water Professional and shall take refresher courses at least once each 12 months or as required by the certifying organization. If, at any time, Wal-Mart wishes to change its Director of Storm Water Compliance, Wal-Mart shall notify Plaintiffs in writing, provide an explanation for the change, and provide EPA the identity of the replacement who shall (i) be a Storm Water Professional; (ii) have at least 5 years of construction-related experience; and (iii) be able to adequately identify and implement storm water sediment and erosion control practices and effectively instruct employees and contractors in the implementation of such practices. At the time Wal-Mart identifies its Director of Storm Water Compliance, or any replacement thereof, Wal-Mart shall also submit evidence that the person selected meets the criteria set forth in this Paragraph, including (a) a copy of the certification demonstrating the individual is a Storm Water Professional; (b) a copy of any other storm water training certificates that person has received; and (c) a copy of the person's resume setting forth at a minimum the construction-related experience and educational background of the selected individual.

4. Wal-Mart's Construction Managers. For each Site, before the initiation of ground-disturbing activities, Wal-Mart shall designate a coordinator, manager, director, or other employee (the "Wal-Mart Construction Manager") responsible for conducting the monthly inspections required by Paragraph 19 (Inspections) and for otherwise overseeing compliance with this Decree, the SWPPP and the requirements of any applicable Permit at that Site. Each Wal-Mart Construction Manager shall (i) be a Storm Water Professional; (ii) have at least 2 years of construction-related experience; and (iii) be able to adequately identify and implement storm water sediment and erosion control practices and effectively instruct employees and contractors in the implementation of such practices; provided, however, that any Construction Manager employed by Wal-Mart on or after the date entry of this Decree shall have 180 days

from the later of the date of employment of such Construction Manager or the date of entry of this Decree to meet the qualifications set forth in this Paragraph.

5. Inclusion of Decree in Bid Package. When requesting bids for construction at any Site, Wal-Mart shall inform all bidding parties of the requirements of this Decree by incorporating the requirements of Section III of the Decree into the construction contract or special conditions to such contract.

6. Permits. Wal-Mart shall not initiate, or allow its contractors or subcontractors to initiate, or direct any contractor or subcontractor to initiate ground-disturbing activities at a Site until all required storm water authorizations have been issued by the local, state, and/or federal authorities, or until coverage has been obtained pursuant to any applicable Permit. Wal-Mart and its Responsible Contractor shall obtain permit coverage, transfer any permit and terminate permit coverage as required or authorized by the applicable Permit.

7. SWPPPs. Wal-Mart shall prepare or cause to be prepared a SWPPP for each Site that (i) complies with the requirements of the applicable Permit; (ii) requires BMPs that are appropriate for the conditions of the Site; (iii) uses erosion management controls, including construction sequencing, and sediment management controls in tandem; and (iv) meets at least the requirements set forth in subparagraph (a) of this Paragraph.

a. Wal-Mart shall ensure that each SWPPP includes, at a minimum:

i. An identification of Wal-Mart's Director of Storm Water Compliance and the Wal-Mart Construction Manager for the project, as well as the Responsible Contractor's Compliance Officer and Project Superintendent for the project, with a description of each person's duties;

ii. A detailed description of the Site, including the location, construction type (*e.g.*, new construction or expansion), existing site conditions, estimates of the total area of the site that is expected to be disturbed, and

estimates of the site's runoff coefficient or appropriate equivalent using the TR-55 model or the Revised Universal Soil Loss Equation (RUSLE);

iii. A legible site map indicating: drainage patterns and slopes, areas of soil disturbance; locations of major structural and nonstructural BMPs; locations of planned stabilization measures; locations of surface waters including wetlands; locations of likely discharge points to surface waters; and locations of off-site material, waste, borrow or equipment storage areas and the location of construction and waste materials expected to be stored on-site. A separate plan sheet shall be used to identify the anticipated conditions of each phase or stage of development so that, for example, a separate plan sheet is prepared for clearing and grading and another plan sheet for construction of the buildings;

iv. A description of BMPs that will be used on the Site including erosion and sediment controls, stabilization practices, structural practices, pre- and post-construction storm water management measures which may be installed to minimize the volume and velocity of runoff, and other controls, like dust and dirt tracking; a description of practices to reduce pollutants from materials stored on site; and measures to protect endangered and threatened species, as necessary and required by any applicable Permit or other law;

v. A description of maintenance procedures for all BMPs to ensure that they are maintained in effective operating condition as required by the relevant Permit or this Decree (*e.g.*, describe actions required by the relevant Permit that will be taken before the next storm event, or as soon as practicable, whenever a BMP is not operating effectively);

vi. A description of the inspection procedures and documentation requirements set forth in Section III of this Decree.

vii. An identification of contractors and subcontractors responsible for implementing each BMP in the SWPPP or, if Wal-Mart has not retained a Responsible Contractor at the time the SWPPP is prepared, a requirement that the contractors and sub-contractors responsible for implementing each BMP be identified in the SWPPP before the Responsible Contractor or its subcontractors engage in ground-disturbing activities;

viii. A description of all post-construction storm water management measures that will be installed during the construction process to control pollutants in storm water discharges after construction operations have been completed and a description of how they have been designed and will be installed in accordance with applicable federal, local, state or tribal requirements.

b. Wal-Mart shall ensure that the SWPPP is signed in accordance with the requirements of the applicable storm water regulations or Permit.

c. Wal-Mart shall require the Responsible Contractor to amend the SWPPP, including the Site Map, whenever there is a change in design, construction, operation, or maintenance at the construction site that has or could have a significant effect on the discharge of pollutants to the waters of the United States that has not been previously addressed in the SWPPP. Revisions to the SWPPP must be completed as soon as practicable and before the next storm event.

8. Notice of Wal-Mart's Director of Storm Water Compliance's Phone Number.

Wal-Mart shall post a conspicuous notice (a) providing the telephone number of Wal-Mart's Director of Storm Water Compliance in the Wal-Mart general contractor construction office at each Site and (b) authorizing all employees and contractors to contact its Director of Storm Water Compliance with any questions or to report problems relating to sediment and erosion control at any Site. If Wal-Mart's Director of Storm Water Compliance is not available to answer the phone at any time, Wal-Mart shall ensure that a person or machine shall be available

to answer or record a message and that such messages are retrieved and addressed within a reasonable time.

9. Training Program.

a. Wal-Mart may submit to EPA for review and approval a proposed training plan for a storm water training program (the “Storm Water Training Plan”). Such Plan shall:

- i. identify the qualifications of any trainers;
- ii. provide for at least six hours of classroom training in the following areas (1) an introduction to the importance of erosion and sediment control; (2) a review of storm water regulations and permits; (3) a review of Wal-Mart’s SWPPP; (4) a review of the principles of erosion and sediment control; (5) selection and implementation of erosion controls; (6) selection and implementation of sediment controls; and (7) a review of the requirements of this Decree and Wal-Mart’s construction contract relating to storm water compliance.
- iii. provide for a written exam designed to determine proficiency in the principles, practices, and legislation of erosion and sediment control and the requirements of this Decree; and
- iv. provide a requirement for appropriate annual refresher training.

b. EPA shall approve Wal-Mart’s proposed Storm Water Training Plan provided that the Plan (i) ensures that individuals who have completed the course will be able to adequately identify and implement storm water sediment and erosion control practices and effectively instruct employees and contractors in the implementation of such practices and (ii) meets the requirements of this Paragraph. If EPA disapproves the Storm Water Training Plan, Wal-Mart shall correct the Plan as directed by EPA or invoke the procedures set forth in Section VIII (Dispute Resolution). Once EPA has approved

Wal-Mart's proposed Storm Water Training Plan, Wal-Mart shall implement the Plan in accordance with its provisions.

10. Annual Seminars. Wal-Mart shall conduct an annual seminar, beginning with the approval of the training plan (the "Annual Seminar Training Plan") pursuant to this Paragraph, on the storm water permit requirements and BMPs for Wal-Mart's Construction Managers and Director of Storm Water Compliance as well as the Compliance Officers and Project Superintendents of Responsible Contractors working at any Site during that year, general contractors, consulting engineers and others substantially involved in construction at Sites.

a. Within 180 days of entry of this Decree, Wal-Mart shall submit to Plaintiffs, for review and approval, a proposed Annual Seminar Training Plan for the annual seminar that identifies the following:

i. The syllabus, agenda, and training materials for the annual seminar that provide for at least 8 hours of classroom instruction focused on the following topics: (1) training objectives; (2) Wal-Mart's storm water compliance mission statement; (3) overview of potential storm water pollution and other environmental impacts of Wal-Mart Site operations; (4) typical requirements of the applicable Permits; (5) requirements for the design, installation and maintenance of BMPs (how to design, install, maintain); (6) typical requirements of a SWPPP; (7) roles of Wal-Mart's Director of Storm Water Compliance and Construction Managers, as well as that of the Responsible Contractors' Compliance Officer and Project Superintendent; (8) role of individual Wal-Mart employees and contractors at the Site (including potential regulatory and environmental consequences of departure from specified operating procedures, such as non-compliance and/or pollutant releases to the environment);

ii. Trainer qualification requirements;

iii. A description of how the training will be reinforced in the workplace in order to maintain increased employee and contractor awareness and involvement in meeting the requirements of the SWPPP, applicable Permits, and other requirements of law.

iv. A description of how a periodic (minimum of at least one annually) evaluation of the training program will occur and how Wal-Mart plans to incorporate the results into program improvements.

v. Record keeping procedures for documenting the training.

b. Plaintiffs shall approve Wal-Mart's proposed Annual Seminar Training Plan provided that the Plan meets the requirements of this Paragraph. If Plaintiffs disapprove the Annual Seminar Training Plan, Wal-Mart shall correct the Plan as directed by EPA or invoke the procedures set forth in Section VIII (Dispute Resolution).

c. Once Plaintiffs have approved Wal-Mart's proposed Annual Seminar Training Plan, Wal-Mart shall implement the Plan in accordance with its provisions.

11. Notice to Plaintiffs of Construction Projects. Within 15 days following the date of entry of this Decree, Wal-Mart shall provide Plaintiffs by electronic mail to the addresses specified in Paragraph 39 (Notification) a list of all Sites and all construction projects at its distribution centers for which Wal-Mart has awarded a construction contract and for which construction has not been completed and final stabilization achieved. By the 15th day of every month, beginning one month after entry of this Decree, Wal-Mart shall provide Plaintiffs with notice by electronic mail at the addresses specified in Paragraph 39 (Notification) of all Sites and distribution centers currently under construction or for which Wal-Mart has awarded a construction contract. Each report required by this Paragraph shall include the following information for each Site: (i) Wal-Mart's Permit number, if available, (ii) the name of the Responsible Contractor(s), where applicable (and their Permit number(s) if different than Wal-Mart's Permit number), (iii) the location of the Site including the physical address and the

latitude and longitude, (iv) a job site contact (include telephone number and/or e-mail), (vi) the best estimate for the start date of ground disturbing activities, and (v) the best estimate for the stop of ground disturbing activities and final stabilization.

### III. WAL-MART'S SUPERVISION OF ITS CONSTRUCTION CONTRACTORS

12. Contractor Checklist. As part of the award of a construction contract by Wal-Mart, Wal-Mart shall review a checklist of storm water requirements and issues with the Responsible Contractor. That checklist shall include the following:

- a. The acknowledgment by the Responsible Contractor of its obligation to obtain a copy of the applicable storm water construction Permit(s);
- b. The requirement that Wal-Mart and its contractors shall, as required by any applicable Permit, submit a Notice of Intent for each Site;
- c. The necessity for and planning of the pre-construction meeting required by Paragraph 16 (Pre-Construction Meetings);
- d. The requirement that all BMPs required by the SWPPP to be installed prior to the start of construction shall have been implemented prior to the commencement of ground disturbing activities;
- e. The requirement that the Responsible Contractor certify to Wal-Mart that appropriate storm water controls are in place prior to the commencement of ground disturbing activity as required by Paragraph 16 (Pre-Construction Meetings).

13. Provision of Guidance Materials. Wal-Mart shall require the Responsible Contractor for each Site to provide to each contractor responsible for ground disturbing activities the most current version of the Colorado Department of Transportation Erosion Control and Storm Water Quality Pocketbook or other equivalent storm water compliance guidance materials appropriate for the conditions at the Site.

14. Designation of Responsible Contractor's Compliance Officer. Wal-Mart shall require the Responsible Contractor to designate its Project Manager as the Compliance Officer



for the Site. Wal-Mart shall require the Responsible Contractor to certify to Wal-Mart in writing prior to the initiation of ground-disturbing activities that the proposed Compliance Officer: (i) is a Storm Water Professional; (ii) has at least 5 years of construction-related experience; and (iii) is able to adequately identify and implement storm water sediment and erosion control practices and effectively instruct employees and contractors in the implementation of such practices; provided, however, that Compliance Officers identified by Responsible Contractors within the first year from the date of entry of this Decree shall have 180 days to either maintain or achieve any necessary certification.

15. Designation of Project Superintendent. Wal-Mart shall require its Responsible Contractor for each Site to designate a Project Superintendent who (i) is responsible for overseeing activities and work at a Site; (ii) has the authority to direct employees and contractors to undertake actions to comply with a Permit, the Clean Water Act, and the Site's SWPPP. Wal-Mart shall require the Responsible Contractor to certify to Wal-Mart in writing before the initiation of ground-disturbing activities that the Project Superintendent: (i) is a Storm Water Professional, or will become a Storm Water Professional, within 30 days of the beginning of ground-disturbing activity and will be accompanied on at least 3 daily inspections per week by the Compliance Officer or any other Storm Water Professional until becoming a Storm Water Professional; (ii) has at least 5 years of construction-related experience; and (iii) is able to adequately identify and implement storm water sediment and erosion control practices and effectively instruct employees and contractors in the implementation of such practices; provided, however, that Project Superintendents identified by Responsible Contractors within the first year from the date of entry of this Decree shall have 180 days to either maintain or achieve any necessary certification.

16. Pre-Construction Meetings.

a. Wal-Mart shall require the Project Superintendent to hold a pre-construction meeting with contractors involved in ground-disturbing activities and their employees prior to initiation of ground-disturbing activities at the Site. The engineer who prepared the SWPPP, or any engineer retained by Wal-Mart who reviews and becomes familiar with the SWPPP, shall also attend this meeting. At such meeting, Wal-Mart shall require the Project Superintendent, and the engineer who prepared the SWPPP, or any engineer retained by Wal-Mart who reviews and becomes familiar with the SWPPP, to explain the applicable Permit requirements, the SWPPP and drawings, and other environmental requirements for the Site. Wal-Mart shall require that at the conclusion of the meeting, the Project Superintendent shall require each attendee to sign a certification that they understand the terms and conditions of the applicable Permit and the SWPPP. If a contractor begins work after the pre-construction meeting has occurred, Wal-Mart shall require the Project Superintendent to brief that contractor before the contractor begins work at the Site. Such briefing shall meet the requirements for a pre-construction meeting.

b. Prior to the initiation of ground-disturbing activities at any Site, except for activities associated with the installation of BMPs at a Site, Wal-Mart shall require the engineer who prepared the SWPPP, or if that engineer is not available an engineer retained by Wal-Mart who reviews and becomes familiar with the SWPPP, and the Project Superintendent to inspect the Site to determine whether the BMPs required by the SWPPP have been installed correctly and in the correct locations. Wal-Mart shall require the engineer who conducts this inspection and the Project Superintendent to certify on or before the date of the pre-construction meeting that the BMPs required by the SWPPP have been installed correctly and in the correct locations prior to the commencement of ground disturbing activity.

17. Weekly Meetings. In addition to the pre-construction meeting, Wal-Mart shall require its Responsible Contractor to hold weekly meetings with persons involved in ground-disturbing activities at each Site to review the requirements of any applicable Permits, the SWPPP, and this Decree and to address any problems that have arisen in implementing the SWPPP or maintaining BMPs.

18. Availability of Plan and Permit. Throughout work at any Site, Wal-Mart shall ensure that the applicable Permit and SWPPP are readily available at the Site, or at a location designated pursuant to the applicable Permit, for review by any contractor or employee, as well as any local, state, or federal inspector in accordance with Paragraph 33 (Right of Entry) or any other permit, law, or regulation then in effect.

19. Inspections.

a. Wal-Mart shall require, with respect to contracts for construction issued after July 1, 2004, that each Project Superintendent conduct an inspection on each Business Day in which construction activity has occurred at a Site for which that Project Superintendent is responsible. Wal-Mart shall require the Project Superintendent to inspect the entire Site to (i) determine whether construction is being conducted in accordance with the requirements of applicable Permits and the applicable SWPPP; (ii) observe, record, and, if necessary, improve the effectiveness of all BMPs and note any correction made or needed; and (iii) observe, record, and, if necessary, take steps to eliminate or reduce to the extent feasible any discharges of pollutants from the Site into waters of the United States. If authorized by the applicable permit, Wal-Mart may authorize the Project Superintendent to reduce the frequency of his inspections to once each month if one of the following conditions are met: (1) the entire site is temporarily stabilized or (2) snow cover exists at the Site for an extended period and melting conditions do not exist. Wal-Mart shall require the Project Superintendent to resume daily inspections as soon as the Site no longer meets one of these conditions.

b. Wal-Mart shall require the Project Superintendent to record the results of the daily inspection in the form set forth in Appendix 1 (Inspection Report Form) and to certify the information contained in the inspection report by signing in the area provided on the daily inspection report form set forth in Appendix 1 (Inspection Report Form). Wal-Mart shall require the Project Superintendent to retain the daily inspection report at the Site. Wal-Mart shall require that once each week, the Project Superintendent shall transmit to Wal-Mart's Construction Manager a report stating that all daily inspections have been conducted and identifying any deficiencies identified during the inspection and any corrective action undertaken to correct deficiencies in BMPs at the Site.

c. Wal-Mart shall require its Responsible Contractor to complete all repairs or modifications to the BMPs identified as necessary during each daily inspection as soon as possible, but no later than 48 hours after the inspection; provided, however, that in the event such repairs or modifications cannot be completed within this time, Wal-Mart shall require its Responsible Contractor to initiate the repairs within 48 hours and to complete the repairs as soon as practicable. Wal-Mart shall also require its contractors to record such repairs and modifications in the SWPPP in accordance with Paragraph 7 (SWPPPs). Wal-Mart shall apply economic sanctions upon the Responsible Contractor for any failure to meet the deadlines imposed in this subparagraph.

d. Wal-Mart shall require the Responsible Contractor's Compliance Officer to accompany each Project Superintendent on a daily inspection of each Site for which the Officer is responsible at least once every 2 weeks. In addition, Wal-Mart shall require the Compliance Officer to review the daily inspection reports prepared by the Site Superintendent in the days since the Compliance Officer's last inspection and ensure that all corrective action noted as necessary on the daily inspection reports has been completed as required by subparagraph (c) of this Paragraph. Wal-Mart shall require the Compliance Officer to certify compliance with the requirements of this Paragraph by

signing in the area provided on the daily inspection report in the form set forth in Appendix 1 (Inspection Report Form). In the event that Wal-Mart has authorized the Project Superintendent to reduce inspection frequency to once per month in accordance with the terms of subparagraph (a) of this Paragraph, Wal-Mart shall require the Compliance Officer to accompany each Project Superintendent on the monthly inspection of the Site. Wal-Mart shall require the Compliance Officer to resume bi-weekly inspections as soon as the Site no longer meets the conditions set forth in subparagraph (a) of this Paragraph.

e. At least once a month, each Wal-Mart Construction Manager assigned to a Site shall accompany the Site Superintendent on a daily inspection. Prior to the inspection, Wal-Mart shall not notify the Site Superintendent or any other person of the day on which the Construction Manager will join the inspection. In addition, Wal-Mart's Construction Manager shall review the daily inspection reports prepared since the last monthly inspection and ensure that all corrective action noted as necessary and appropriate on the daily inspection reports has been completed as required by subparagraph (c) of this Paragraph. The Wal-Mart Construction Manager shall identify on the inspection form changes in Wal-Mart's inspection and oversight procedures that are necessary to ensure compliance with this Decree, the Clean Water Act, and any applicable Permits and address any pattern of deficiencies identified in the Responsible Contractor's implementation of the SWPPP or maintenance of the BMPs. Wal-Mart's Construction Manager shall certify compliance with the requirements of this Paragraph by signing in the area provided on the daily inspection report for the day on which the Construction Manager conducts the inspection in the form set forth in Attachment 1 (Inspection Report Form). Wal-Mart may suspend its monthly inspections during any period in which subparagraph (a) of this Paragraph allows Wal-Mart to authorize the Project Superintendent to conduct monthly rather than daily inspections. Wal-Mart shall

resume its monthly inspections as soon as the Site no longer meets one of these conditions.

f. If, during a monthly inspection, Wal-Mart's Construction Manager determines that any BMP requires repair or that the Site is not in compliance with the requirements of this Decree, the Clean Water Act or any applicable Permit, Wal-Mart's Construction Manager shall identify on the inspection report the actions necessary to repair the BMP or bring the Site into compliance with the requirements of this Decree, the Clean Water Act, and any applicable Permit or to address any pattern of deficiencies identified by the Construction Manager. Wal-Mart shall require the Project Superintendent to certify compliance with the requirements of this Paragraph by signing in the area provided on the daily inspection report in the form set forth in Appendix 1 (Inspection Report Form), no later than 5 days after the monthly inspection, that the Responsible Contractor has taken all actions identified by Wal-Mart's Construction Manager as necessary to repair the BMP or bring the Site into compliance with the requirements of this Decree, the Clean Water Act and any applicable Permit or to address any pattern of deficiencies identified by the Construction Manager.

g. If, during a daily, weekly, or monthly inspection, the Responsible Contractor or Wal-Mart identifies a deficient BMP or other condition that must be corrected to ensure compliance with this Decree, the applicable Permit, or the Clean Water Act, and the Responsible Contractor fails to certify correction within 5 days of the inspection in which the need for correction was identified, in addition to any economic sanctions imposed pursuant to subparagraph (c) of this Paragraph, Wal-Mart shall take the steps set forth in this subparagraph and subparagraph (h) of this Paragraph. First, within 7 days after the first observation of the deficiency, the Construction Manager shall notify a Wal-Mart Director of Construction. Second, within 15 days after the inspection giving rise to the notice, the Wal-Mart Project Director shall contact the Project

Superintendent of the general contractor at such site and demand immediate compliance and apply available economic and other incentives. Third, if the deficiency has not been corrected within 45 days after the inspection giving rise to the notice, the Director of Construction of Wal-Mart or his designee shall contact the owner or chief executive officer of the general contractor, and invoke such contractual measures as are necessary to obtain correction, including the withholding of contractor progress payments, hiring of additional contractors to perform such correction at the general contractor's expense, termination of the construction contract, or other remedies.

h. If at any time during the procedures set forth in subparagraph (g) of this Paragraph there are actual discharges of pollutants from the Site resulting from a deficiency observed during a daily, weekly, or monthly inspection, Wal-Mart shall ensure that such discharges are eliminated or reduced to the extent feasible as soon as practical but no later than 24 hours after the onset of the discharges. Further, nothing in this Paragraph shall be construed to limit the authority of any state, local, tribal, or federal agency to enforce any Permit or to issue orders to Wal-Mart or its contractors to take immediate corrective action except as explicitly set forth in Paragraph 47 (Covenant Not to Sue by Plaintiffs).

20. Wal-Mart's Director of Storm Water Compliance Review and Report. Wal-Mart's Construction Managers shall submit each inspection report signed by a Wal-Mart Construction Manager for the Site to the Director of Storm Water Compliance within 5 days of completing the inspection. The Director of Storm Water Compliance shall review the submitted inspection reports and, within forty-five (45) days of the end of each calendar quarter after entry of this Decree, prepare and submit a report to Plaintiffs (a) summarizing and attaching each inspection report signed by a Wal-Mart Construction Manager, (b) attaching any additional documentation demonstrating correction of deficiencies identified in the inspection reports signed by a Wal-Mart Construction Manager; and (c) setting forth an accounting of the receipts

and expenditures in the escrow account established pursuant to Paragraph 53(b) (Payment of Stipulated Penalties).

21. Temporary Alteration of BMPs. If, during the course of construction at a Site, the temporary removal or alteration of a BMP is necessary to accomplish the construction or to protect health and safety, Wal-Mart shall require the Project Superintendent to note such removal or alteration on the daily inspection form, including specific information regarding the changes made and the day and time such changes were made. Wal-Mart shall require its Responsible Contractor to restore the BMP as soon as practicable but in no case later than 24 hours after the completion of the activity that required the change. Wal-Mart shall require the Project Superintendent to note the restoration on the daily inspection form, including specific information regarding the day and time at which the restoration was begun and completed. Wal-Mart shall take all reasonable measures to prevent discharges from the Site to the waters of the United States during the time that the BMP has been altered or removed, including, but not necessarily limited to timing the removal or alteration of the BMP so that it occurs when precipitation is not forecast and installing new or alternate BMPs outside the affected area.

22. Final Wal-Mart Inspection. The Wal-Mart Construction Manager for each Site shall perform an inspection of the Site at the conclusion of the construction project to ascertain whether all areas of the Site have been stabilized in accordance with the Permit and the Site is eligible to terminate permit coverage. Wal-Mart's Construction Manager shall sign and certify a report on the inspection. The certified inspection report shall be retained by Wal-Mart with the SWPPP as required by this Decree and any applicable Permit or other requirement of law. If all areas of the Site have been finally stabilized in accordance with permit conditions and requirements, Wal-Mart or the Responsible Contractor shall file a notice of termination of permit coverage as required by the applicable Permit. If the Site has not been stabilized in accordance with the Permit, Wal-Mart shall ensure that all stabilization has been completed and the final inspection repeated before a notice of termination is filed.



#### IV. CIVIL PENALTY

23. Civil Penalty. Within 30 days after entry of this Decree, Wal-Mart shall pay a civil penalty of \$3,100,000.

24. Agreement Not to Seek Indemnification or Insurance Coverage. Wal-Mart shall pay the civil penalty out of its own funds and shall not seek indemnification or insurance coverage for the civil penalty from any contractor or third party. Except as expressly provided in Paragraph 53(b) (Payment of Stipulated Penalties), nothing in this Paragraph shall prevent Wal-Mart from seeking contractual indemnification, insurance coverage, stipulated penalties or liquidated damages from any Responsible Contractor at any Site at which construction is initiated after entry of this Decree in connection with violations of any applicable Permit or the Clean Water Act committed by any Responsible Contractor or Wal-Mart. Nothing in this Paragraph shall be construed to prevent any Plaintiff from asserting in any future action that Wal-Mart must pay a civil penalty out of its own funds.

25. Method of Payment. Payment of such penalty shall be made in the following manner:

a. Payment of \$2,480,000 of the penalty shall be made payable to the "Treasurer of the United States" by Electronic Funds Transfer ("EFT" or wire transfer) to the United States Department of Justice lock box bank, referencing DOJ # 90-5-1-1-4510/3 and the USAO File Number. A confirmation of such transfer shall be forwarded to the United States at the addresses specified in Paragraph 39 (Notification).

b. Payment of \$62,000 of the penalty shall be made by certified check made out to the State of Tennessee and mailed to

Chris Moran  
Enforcement and Compliance Section  
Division of Water Pollution Control  
6th Floor L& C Annex  
401 Church Street  
Nashville, Tennessee 37243-1534

Wal-Mart shall send a copy of the check and cover letter to Tennessee in accordance with Paragraph 39 (Notification).

c. Payment of \$558,000 of the penalty shall be made by certified check made out to the “Utah Hazardous Substances Mitigation Fund” and sent by overnight courier to:

Dianne Nielson, Executive Director  
Utah Department of Environmental Quality  
168 North 1950 West  
Salt Lake City UT 84116

Wal-Mart shall send a copy of the check and cover letter to Utah in accordance with Paragraph 39 (Notification).

#### V. GENERAL PROVISIONS

26. Jurisdiction and Venue. This Court has jurisdiction over the subject matter of this action and over the parties pursuant to 33 U.S.C. §1319 and 28 U.S.C. §§ 1331, 1345 and 1355. The Complaint states a claim upon which relief may be granted under 33 U.S.C. § 1319. Venue is proper under 28 U.S.C. § 1391(b) and (c). For purposes of the Decree, Wal-Mart consents to and will not contest the jurisdiction of this Court over this matter. The Court shall retain jurisdiction to enforce the terms and conditions of this Decree, to resolve disputes arising hereunder and for such other action as may be necessary or appropriate for construction or execution of the Decree.

27. Parties Bound. In accordance with the provisions of Federal Rule of Civil Procedure 65, the provisions of this Decree shall apply to and be binding upon the United States, the State of Utah and the State of Tennessee, and upon Wal-Mart, its officers, directors, agents, trustees, servants, employees, successors and assigns and upon those persons in active concert or participation with Wal-Mart who receive actual notice of the Decree by personal service or otherwise. Within 10 days of entry of this Decree, Wal-Mart shall provide a copy of this Decree to each Compliance Officer, each Project Superintendent, and each person or firm retained by Wal-Mart to implement this Decree. If a Compliance Officer, Project Superintendent, or person

or firm is retained more than 10 days after entry of the Decree, Wal-Mart shall provide such person or firm a copy of the Decree within 10 days of retention.

28. Responsibility for Acts of Contractors or Agents. In any action to enforce this Decree, Wal-Mart shall not assert as a defense the failure of its officers, directors, agents, trustees, servants, employees, successors, assigns, and contractors to take actions necessary to comply with this Decree unless Wal-Mart establishes that the failure resulted from a Force Majeure event as defined in Section IX (Force Majeure).

29. No Warranty by the Plaintiffs. The Plaintiffs do not, by their consent to entry of this Decree, warrant or aver in any manner that Wal-Mart's compliance with this Decree will result in compliance with the provisions of applicable federal or state laws, regulations, or permit conditions. Notwithstanding the Plaintiffs' review and approval of any data, reports or plans formulated pursuant to this Decree, Wal-Mart shall remain solely responsible for compliance with this Decree, the Clean Water Act, any Permit, and any other applicable state, federal, or local law or regulation.

30. Headings. Headings in this Decree are provided for convenience only and shall not affect the substance of any provision.

31. Final Judgment. Upon approval and entry of this Decree by the Court, this Decree shall constitute a final judgment between and among the Parties.

32. Purpose of Decree. It is the express purpose of this Decree to further the objectives of the Clean Water Act as well as regulations and permits issued pursuant to that Act. All obligations in this Decree shall have the objective of causing Wal-Mart to be and remain in full compliance with the Act, the regulations and permits issued pursuant to the Clean Water Act, as well as state laws, regulations, and permits authorized pursuant to the Clean Water Act.

33. Right of Entry.

a. Until termination of this Decree, Plaintiffs, their representatives, contractors, consultants and attorneys and their contractors and consultants shall each

have the authority to enter, at reasonable times and upon presentation of credentials, any Site or any location at which records relating to this Decree are kept for the purposes of:

- i. monitoring Wal-Mart's compliance with this Decree;
- ii. verifying any data or information submitted by Wal-Mart pursuant to this Decree;
- iii. obtaining samples from any Site and, upon request, splits or duplicates of any samples taken by Wal-Mart, its contractors or consultants; and
- iv. reviewing and copying any records required to be kept by Wal-Mart pursuant to this Decree.

b. To the extent that Plaintiffs seek to review records maintained at a location other than a Site, Plaintiffs shall contact Wal-Mart's Director of Storm Water Compliance 24 hours before such review. Wal-Mart shall make such records available to the Plaintiffs at a reasonable time and location at Wal-Mart's offices in Bentonville, Arkansas or provide copies of such records to Plaintiffs at Plaintiffs' offices. Nothing in this subparagraph (b) shall be construed to restrict Plaintiffs' right to review records at a Site.

34. No Limitation on Other Rights of Entry. Nothing in Paragraph 33 (Right of Entry) or any other provision of this Decree shall be construed to limit any statutory right of entry or access or other information gathering authority pursuant to any federal, state, or local law.

35. Preservation of Records. In addition to complying with any other applicable local, state, or federal records preservation requirements, until one calendar year after termination of this Decree, Wal-Mart shall preserve at least one legible copy of all documents in its possession, custody, or control that relate to the performance of Wal-Mart's obligations under this Decree. Within 30 days of retaining or employing any agent, consultant, or contractor for the purpose of carrying out the terms of this Decree, Wal-Mart shall enter into an agreement with

any such agent, consultant, or contractor requiring such person to provide Wal-Mart a copy of all documents relating to the performance of Wal-Mart's obligations under this Decree.

36. Claims of Confidentiality. Wal-Mart may assert business confidentiality claims covering part or all of any documents or information submitted by Wal-Mart under this Decree to the extent permitted by and in accordance with 40 C.F.R. Part 2, or state or tribal law as applicable. Documents or information determined to be confidential by EPA will be afforded the protection specified in 40 C.F.R. Part 2, Subpart B. If no claim of confidentiality accompanies documents or information when they are submitted to any Plaintiff, or if EPA has notified Wal-Mart that the documents or information are not confidential under the standards of 40 C.F.R. Part 2, the public may be given access to such documents or information without further notice to Wal-Mart.

37. Authority to Sign Decree. The undersigned representative of Wal-Mart certifies that he or she is authorized to enter into this Decree and to execute and legally bind Wal-Mart to the terms and conditions of this Decree and meets the requirements for authorized signatory found in 40 C.F.R. § 122.22.

38. Designation of Agent for Service. Wal-Mart shall identify on the attached signature page the name and address of an agent who is authorized to accept service of process by mail on Wal-Mart's behalf with respect to all matters arising under or relating to this Decree. Wal-Mart agrees to accept service in that manner and to waive the formal service requirements of Federal Rule of Civil Procedure 4 and any applicable local rules of this Court, including, but not limited to, service of summons.

39. Notification.

a. When written notification or communication is required by the terms of this Decree, such notification or communication shall be addressed to the following individuals at the addresses specified below (or to such other addresses as may be designated by written notice to the parties):

As to the United States:

Chief, Environmental Enforcement Section  
Environment & Natural Resources Division  
U.S. Department of Justice  
Box 7611, Ben Franklin Station  
Washington, D.C. 20044-7611  
Reference Case No. 90-5-1-1-4510/3

Lee Hanley  
U.S. EPA, Region 8  
999 18th Street, Suite 300  
8 ENF-T  
Denver, CO 80202-2466  
303-312-6555  
[hanley.lee@epa.gov](mailto:hanley.lee@epa.gov)

United States Attorney  
Chief, Civil Division  
District of Delaware  
1007 N. Orange St., Suite 700  
Wilmington, DE 19801

Lauren V. Kabler  
Attorney-Advisor  
U.S. EPA, OECA/ORE/WED  
Ariel Rios Building South  
1200 Pennsylvania Avenue, NW  
Mailstop 2243A  
Washington, D.C. 20460  
202-564-4052  
[kabler.lauren@epa.gov](mailto:kabler.lauren@epa.gov)

As to the State of Tennessee:

Phillip Hilliard, Esq.  
Office of the Attorney General  
Environmental Division  
Cordell Hull Building, Ground Floor  
425 Fifth Avenue North  
Nashville, TN 37243-0495  
615-741-4612  
[phillip.hilliard@state.tn.us](mailto:phillip.hilliard@state.tn.us)

As to the State of Utah:

Laura Lockhart  
160 East 300 South  
5th Floor  
P.O. Box 140873  
Salt Lake City, UT 84114-0873  
801-366-0283  
[llockhart@utah.gov](mailto:llockhart@utah.gov)

As to Wal-Mart:

Vice President Construction and Design  
Wal-Mart Stores, Inc.  
Sam M. Walton Development Complex  
2001 S.E. 10th St.  
Bentonville, AR 72712-6489

with copy to:

Troy A. Eid, Esq.  
Christopher J. Neumann, Esq.  
Greenberg Traurig, LLP  
The Tabor Center  
1200 Seventeenth Street  
Twenty-Fourth Floor  
Denver, Colorado 80202

General Counsel  
Wal-Mart Stores, Inc.  
Sam M. Walton Development Complex  
2001 S.E. 10th St.  
Bentonville, AR 72712-6489

b. Notifications to or communications with Wal-Mart or the Plaintiffs shall be deemed submitted on the date they are postmarked and sent by certified mail, return receipt requested.

40. Certification of Reports and Submissions. Except as otherwise expressly provided in this Decree, any report or other document submitted by Wal-Mart pursuant to this Decree which makes any representation concerning compliance or noncompliance with any requirement of this Decree shall be certified by a Responsible Officer of Wal-Mart. The certification shall be in the following form:

I certify that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to evaluate the information submitted. I certify that the information contained in or accompanying this submittal is true, accurate, and complete. As to those identified portion(s) of this submittal for which I cannot personally verify the accuracy, I certify that this submittal and all attachments were prepared in accordance with procedures designed to assure that qualified personnel properly gathered and evaluated the information submitted. Based on my inquiry of the person or persons who manage the system, or those directly responsible for gathering the information, or the immediate supervisor of such person(s), the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.

Signature: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

41. Entire Agreement. This Decree is the final, complete, and exclusive agreement between the Parties. The Parties acknowledge that there are no inducements, promises, representations, agreements, or understandings relating to the settlement other than those expressly contained in this Decree.

42. Modification. The deadlines set forth in Paragraphs 3 (Designation of Wal-Mart's Director of Storm Water Compliance), 10 (Annual Seminars), and 11 (Notice to Plaintiffs of Construction Projects) of this Decree may be modified by this Court in accordance with Section VIII (Dispute Resolution) or by written agreement of the parties and notification to the Court. Modifications by agreement of the parties shall be effective 10 days after the date the notice is filed with the Court unless otherwise ordered by the Court. With respect to all other provisions of this Decree, except as expressly provided in Section VIII (Dispute Resolution), there shall be no modification of this Decree without written agreement of all the parties to this Decree and approval by the Court. Wal-Mart's failure to obtain a federal or state grant or other public assistance shall not be a basis for modification of this Decree. Unanticipated or increased costs or expenses associated with the implementation of actions called for by this Decree and economic hardship or changed financial circumstances shall not serve as a basis for modifications of this Decree.

43. Costs of Suit. Each party to this action shall bear its own costs and attorneys' fees incurred prior to entry of the Decree in this action.

44. Public Notice. The parties acknowledge and agree that the final approval and entry of this Decree is subject to the requirements of 28 C.F.R. § 50.7, which provides that notice of proposed consent decrees be given to the public and that the public shall have at least 30 days in which to make any comments. The United States may withhold or withdraw its consent to this Decree based on such comments.

45. Agreement to Entry of Decree. Wal-Mart hereby agrees not to oppose entry of this Decree by this Court or to challenge any provision of this Decree.

46. Termination of Decree.

a. No sooner than 5 years after entry of this Decree, Wal-Mart may request the Plaintiffs' consent to termination of this Decree. In seeking such consent, Wal-Mart shall demonstrate that:



- i. Wal-Mart has paid all monies, civil penalties, interest, and stipulated penalties due under this Decree;
- ii. As of the date Wal-Mart provides any notice or request to terminate this Decree, EPA has not provided Wal-Mart with any Notice of Dispute invoking the Dispute Resolution provisions of this Decree, and there are no unresolved matters subject to dispute resolution pursuant to Section VIII (Dispute Resolution);
- iii. No enforcement action under this Decree is pending; and
- iv. Wal-Mart is in compliance with the requirements set forth in Sections II (Wal-Mart's Compliance Program) and Section III (Wal-Mart's Supervision of its Construction Contractors).

b. Each Plaintiff shall notify Wal-Mart in writing within 30 days of receiving Wal-Mart's request either that such Plaintiff objects to the request to terminate or that it does not object to the termination of the Decree. If any Plaintiff objects to such request, Wal-Mart may invoke the provisions of Section VIII (Dispute Resolution), and the Decree shall remain in effect pending resolution of the dispute by the parties, or, ultimately, the Court.

c. The Court may terminate this Decree 60 days after Wal-Mart has filed with the Court a motion to terminate the Decree and served a copy of that motion upon the Plaintiffs, so long as either (1) Wal-Mart's motion to terminate the Decree is accompanied by a true and correct copy of each Plaintiff's notice that it does not object to the termination or (2) Wal-Mart prevails in the dispute resolution process invoked pursuant to subparagraph (b) of this Paragraph.

## VI. EFFECT OF DECREE

### 47. Covenants Not to Sue by Plaintiffs.

a. In consideration of the payment of the penalty required by Paragraph 23 (Civil Penalty) and the full and satisfactory compliance by Wal-Mart with the terms of this Decree, Plaintiffs hereby covenant not to sue or take administrative action against Wal-Mart pursuant to the Clean Water Act or any state law authorized pursuant to 33 U.S.C. § 1342(b) for civil violations or alleged civil violations of the conditions, limitations and requirements of the Federal General Permit, the California General Permit, the Colorado General Permit, the Delaware General Permit, the Michigan General Permit, the New Jersey General Permit, the South Dakota General Permit, the Texas General Permit, and the Utah General Permit as alleged in the Plaintiffs' Complaints through the date of lodging of this Decree at the following completed Wal-Mart store construction sites: (i) Store No. 6684/1708 (Riverdale, Utah); (ii) Store No. 3232 (West Jordan, Utah); (iii) Store No. 4730 (West Jordan, Utah); (iv) Store No. 2791 (Georgetown, Delaware); (v) Store No. 984 (Castle Rock, Colorado); (vi) Store No. 2752 (Commerce City, Colorado); (vii) Store No. 966 (Cortez, Colorado); (viii) Store No. 2892 (Parker, Colorado); (ix) Store No. 1001 (Pueblo, Colorado); (x) Store No. 5033 (Fort Morgan, Colorado); (xi) Store No. 1689 (Aurora, Colorado); (xii) Store No. 4786 (Logan, Utah); (xiii) Store No. 286 (Ennis, Texas); (xiv) Store No. 6631 (Aurora, Colorado); (xv) Store No. 3566 (Aurora, Colorado); (xvi) Store No. 3568 (West Valley, Utah); (xvii) Store No. 1535 (Sioux Falls, South Dakota); (xviii) Store No. 1741 (Milford, Delaware); (xix) Store No. 619 (Dayton, Tennessee); (xx) Store No. 3582 (Colorado Springs, Colorado); (xxi) Store No. 1719 (Big Rapids, Michigan); (xxii) Store No. 1988/6621 (Roseville, California); (xxiii) Store No. 953 (Loveland, Colorado); and (xxiv) Store No. 5142 (Neptune, New Jersey), through the date of lodging.

b. In further consideration of the payment of the penalty required by Paragraph 23 (Civil Penalty) and the full and satisfactory compliance by Wal-Mart with the terms of this Decree, Plaintiffs also hereby covenant not to sue or take administrative

action against Wal-Mart pursuant to the Clean Water Act or any state law authorized pursuant to 33 U.S.C. § 1342(b) for any and all civil or administrative liability arising out of, or from further obligation to comply with, the following: (i) the information request issued by the U.S. Environmental Protection Agency Headquarters Office of Enforcement and Compliance Assurance to Wal-Mart pursuant to Section 308 of the Clean Water Act dated August 28, 2003; (ii) the administrative order entitled “Findings of Violation and Order for Compliance” issued In the Matter of Wal-Mart Stores, Inc. and ICI Construction, Inc., Docket No. CWA-06-2002-1065 by the U.S. Environmental Protection Agency, Region 6, dated July 26, 2002; (iii) the Notice of Violation of Storm Water Permits SDR-10A676 and SDR-10A686 issued by EPA and dated June 20, 2003; (iv) the Notice of Violation of Storm Water Permit UTR 100864 issued by EPA and dated June 20, 2003; (v) the Notice of Violation of Storm Water Permit UTR 100918 issued by EPA and dated June 20, 2003; (vi) the Notice of Violation of Storm Water Permit UTR 100863 issued by EPA and dated June 23, 2003; (vii) the Notice of Violation of Storm Water Permit UTR 100917 issued by EPA and dated June 20, 2003; (viii) the Notice of Violation of Storm Water Permit UTR 100901 issued by EPA and dated June 20, 2003.

c. In further consideration of the payment of the penalty required by Paragraph 23 (Civil Penalty) and the full and satisfactory compliance by Wal-Mart with the terms of this Decree, Plaintiffs also hereby covenant not to sue or take civil or administrative action against Wal-Mart pursuant to the Clean Water Act or any state law authorized pursuant to 33 U.S.C. § 1342(b) for civil violations or alleged civil violations of the conditions, limitations and requirements of the Federal General Permits or any construction storm water general permit issued pursuant to a state law authorized pursuant to 33 U.S.C. § 1342(b) based on any facts identified by Plaintiffs through the inspection of any Site prior to the date of lodging of this Decree.

d. In further consideration of the payment of the penalty required by Paragraph 23 (Civil Penalty), the full and satisfactory compliance by Wal-Mart with the terms of this Decree, and Wal-Mart's withdrawal of the Notice of Dispute filed in United States v. Wal-Mart Stores, Inc., et al, Civ. No. 01-5115 (W.D. Arkansas), the United States also hereby covenants not to sue or take civil or administrative action to enforce the Consent Decree entered in United States v. Wal-Mart Stores, Inc., et al, Civ. No. 01-5115 (W.D. Arkansas) on August 1, 2001 (the "2001 Consent Decree") against Wal-Mart for any and all claims arising out of any facts identified by Plaintiffs through the inspection of any Site or otherwise prior to the date of lodging of this Decree. The United States and Wal-Mart agree to jointly provide Notice of Termination of the 2001 Consent Decree, and Wal-Mart agrees to withdraw its July 31, 2003 Notice to Dispute.

48. No Effect on Third Parties. Except as expressly provided in Paragraph 24 (Agreement Not to Seek Indemnification or Insurance Coverage) and 53 (Payment of Stipulated Penalties), this Decree does not limit or affect the rights of Wal-Mart or of the Plaintiffs against any third parties not party to this Decree, nor does it limit the rights of third parties not party to this Decree, against Wal-Mart except as otherwise provided by law. This Decree shall not be construed to create rights in, or grant any cause of action to, any third party not party to this Decree.

49. Plaintiffs' Reservations of Rights.

a. Each Plaintiff reserves all rights not expressly waived in this Decree.

b. Each Plaintiff reserves all rights and remedies, legal and equitable, available to enforce the provisions of this Decree.

c. Each Plaintiff reserves the right to seek and obtain criminal sanctions against any person, including Wal-Mart.

d. Each Plaintiff reserves the right to undertake any action against any person, including Wal-Mart, in response to conditions which may present an imminent and substantial endangerment to the public health or welfare or the environment.

50. Wal-Mart's Reservation of Rights; Effect of Decree. Except as provided by the express terms of this Decree, Wal-Mart reserves any rights or defenses available to it in any future action brought by the United States, the State of Utah or the State of Tennessee to enforce this Decree, applicable Permits, the Clean Water Act, or any other statutes, regulations, or rules. The execution of this Decree is not an admission of liability by Wal-Mart, nor is it an admission or denial of the factual allegations arising out of the transactions or occurrences alleged in the Complaint.

51. Not a Permit Modification. This Decree is neither a permit nor a modification of existing permits under any federal, state, or local law, and in no way relieves Wal-Mart of its responsibilities to comply with all applicable federal, state, and local laws and regulations.

## VII. STIPULATED PENALTIES

52. Stipulated Penalty Amounts. If EPA determines that Wal-Mart has failed to comply fully and timely with the requirements of this Decree, including the compliance dates for each and every measure set forth in Section II, and all requirements set forth in applicable Permits, then upon written demand of a Plaintiff, Wal-Mart shall pay stipulated penalties in the following amounts:

- a. for failure to submit a Notice of Intent or otherwise obtain a permit for any Site, failure to prepare a SWPPP for any Site, failure to have the SWPPP available at the Site, or failure to have the Permit available at a Site: \$1,000 per day per violation;
- b. for each deficiency in a SWPPP for a Site, \$800 per day per violation;
- c. for failure to install a BMP \$2,000 per day per violation;
- d. for improper installation of a BMP, improper maintenance of a BMP, and the installation of an inadequate BMP, \$1,500 per day per violation;

e. for failure to conduct the inspections required by Paragraph 16 (Pre-Construction Meetings), 19(e) (Monthly Inspections), or 22 (Final Wal-Mart Inspection), \$5,000 for each missed inspection;

f. for failure to comply with Paragraphs 5 (Inclusion of Decree in Bid Packages), 12 (Contractor Checklist), 13 (Provision of Guidance Materials), or 16 (Pre-Construction Meeting), \$1,000 per day per violation;

g. for failure to require action of its Responsible Contractor, \$1,000 per day per violation;

h. for failure to designate a Director of Storm Water Compliance or Construction Manager, \$500 per day per violation;

i. for failure to take any corrective action required pursuant to Paragraph 19 (Inspections), \$1,000 per day for the first ten days of each violation, \$2,500 per day for the next ten days of each violation, and \$5,000 per day for each subsequent day of each violation;

j. for failure to provide reports required pursuant to Paragraphs 11 (Notice to Plaintiffs of Construction Projects), 10 (Annual Seminars), and 20 (Director of Storm Water Compliance Review and Report), \$500 per day for the first ten days of each violation, \$1,000 per day for the next ten days of each violation, and \$2,500 per day for each subsequent day of violation.

k. for failure to comply with any of the requirements of Section X (Supplemental Environmental Projects), including the requirements of any plan approved by EPA pursuant to Paragraph 69 (Performance of Supplemental Environmental Project), \$1,000 per day per violation.

53. Payment of Stipulated Penalties.

a. All penalties owed to the Plaintiffs under this Section shall be due and payable within 30 days of Wal-Mart's receipt from any Plaintiff of a demand for payment

of the penalties, unless Wal-Mart invokes the procedures under Section VIII (Dispute Resolution).

i. Wal-Mart shall forward 80 percent of the amount due by Electronic Funds Transfer (“EFT”) to the United States Department of Justice lockbox bank referencing DOJ case number 90-5-1-1-4051/3 and the United States Attorney General’s Office file number 2001V00014 in accordance with instructions provided by the United States upon entry of this Decree. Any EFTs received at the United States Department of Justice lockbox bank after 11:00 a.m. (Eastern Time) will be credited on the next Business Day. After payment, Wal-Mart shall mail a cover letter specifying the amount and date of payment, civil docket number and reason for payment, to the United States in accordance with Paragraph 39 (Notification).

ii. Wal-Mart shall forward 2 percent of the amount due by certified check made out to the State of Tennessee and mailed to

Chris Moran  
Enforcement and Compliance Section  
Division of Water Pollution Control  
6th Floor L& C Annex  
401 Church Street  
Nashville, Tennessee 37243-1534.

Wal-Mart shall send a copy of the check and cover letter to Tennessee in accordance with Paragraph 39 (Notification).

iii. Wal-Mart shall forward 18 percent of the amount due by certified check made out to certified check made out to the “Utah Hazardous Substances Mitigation Fund” and sent by overnight courier to:

Dianne Nielson, Executive Director  
Utah Department of Environmental Quality  
168 North 1950 West  
Salt Lake City UT 84116

Wal-Mart shall send a copy of the check and cover letter to Utah in accordance with Paragraph 39 (Notification).

b. Wal-Mart may seek and obtain contractual indemnification, insurance coverage, stipulated penalties or liquidated damages from any Responsible Contractor at any Site at which construction is initiated after entry of this Decree in connection with stipulated penalties paid under this Decree for violations of the requirements imposed on that Responsible Contractor by Wal-Mart pursuant to this Decree committed by any Responsible Contractor; provided, however, that

i. any proceeds of such indemnification, stipulated penalties, or liquidated damages paid to Wal-Mart by a Responsible Contractor for violations of such requirements shall be paid into an escrow account established by Wal-Mart; provided however, that Wal-Mart shall not be required to place into such escrow account any attorneys' or consultants' fees, costs, expenses or other amount recovered from its Responsible Contractor that exceeds the stipulated penalty paid to the United States. Funds deposited in the escrow account established pursuant to this subparagraph shall be expended for the installation and maintenance of post-construction BMPs at Sites.

ii. Wal-Mart does not seek a deduction from any state, federal, or local taxes for any expenditures from the escrow account established pursuant to this Paragraph; and

iii. Wal-Mart complies with the reporting obligations set forth in Paragraph 20 (Wal-Mart's Director of Storm Water Compliance Review and Report).

54. Accrual of Stipulated Penalties. Stipulated penalties shall begin to accrue on the day after performance is due or the day a violation occurs and shall continue to accrue through the final day of the correction of the noncompliance or completion of the activity. Nothing



herein shall prevent the simultaneous accrual of separate penalties for separate violations of this Decree. Stipulated penalties shall accrue regardless of whether Plaintiffs have notified Wal-Mart of a violation.

55. No Effect on Obligation to Comply. The payment of penalties shall not alter in any way Wal-Mart's obligation to comply with the requirements of this Decree.

56. Effect of Dispute Resolution. Penalties shall continue to accrue during any dispute resolution period, but need not be paid until the following:

a. If the dispute is resolved by agreement or by a decision of EPA that is not appealed to this Court, Wal-Mart shall pay accrued penalties determined to be owing to the United States within 15 days of the agreement or the receipt of EPA's decision or order;

b. If the dispute is appealed to the Court and the Plaintiffs prevail in whole or in part, Wal-Mart shall pay all accrued penalties determined by the Court to be owed to Plaintiffs within 30 days of receipt of the Court's decision or order, except as provided in subparagraph (c) of this Paragraph;

c. If the Court's decision is appealed by any party, Wal-Mart shall pay all accrued penalties determined by the District Court to be owing to the Plaintiffs into an interest-bearing escrow account within 30 days of receipt of the Court's decision or order. Penalties shall be paid into this account as they continue to accrue, at least every 30 days. Within 15 days of receipt of the final appellate court decision, the escrow agent shall pay the balance of the account to the Plaintiffs or to Wal-Mart to the extent that they prevail.

57. Interest on Late Payment. If Wal-Mart fails to pay stipulated penalties when due, Wal-Mart shall pay interest accrued at the rate established by the Secretary of the Treasury under 31 U.S.C. § 3717 beginning upon the day the stipulated penalties were due.

58. Non-Exclusivity of Remedy. Stipulated penalties are not the Plaintiffs' exclusive remedy for violations of this Decree. Plaintiffs expressly reserve the right to seek any other relief they deem appropriate, including but not limited to, action for statutory penalties, contempt, or injunctive relief against Wal-Mart. However, the amount of any statutory penalty assessed for a violation of this Decree shall be reduced by an amount equal to the amount of any stipulated penalty assessed and paid pursuant to this Decree for the same violation.

#### VIII. DISPUTE RESOLUTION

59. Exclusive Remedy. Unless otherwise expressly provided for in this Decree, the Dispute Resolution procedures of this Section shall be the exclusive mechanism to resolve disputes arising under this Decree. However, the procedures set forth in this Section shall not apply to actions by any Plaintiff to enforce obligations of Wal-Mart that have not been disputed in accordance with this Section.

60. Informal Dispute Resolution. Any dispute subject to dispute resolution under this Decree shall first be the subject of informal negotiations. The dispute shall be considered to have arisen on the day Wal-Mart hand delivers each Plaintiff a written Notice of Dispute or on the day following delivery by overnight courier, or three days following delivery by U.S. Mail. Such Notice of Dispute shall state clearly the matter in dispute. The period of informal negotiations shall not exceed 60 days from the date the dispute arises, unless that period is modified by written agreement. If the Parties cannot resolve a dispute by informal negotiations, then the position advanced by the United States shall be considered binding unless, within 45 days after the conclusion of the informal negotiation period, Wal-Mart invokes formal dispute resolution procedures set forth in Paragraph 61 (Formal Dispute Resolution).

61. Formal Dispute Resolution.

a. Within 45 days after the conclusion of the informal negotiation period, Wal-Mart may invoke formal dispute resolution procedures by serving on the Plaintiffs a written Statement of Position regarding the matter in dispute. The Statement of Position

shall include, but may not be limited to, any factual data, analysis, or opinion supporting Wal-Mart's position and any supporting documentation relied upon by Wal-Mart.

b. The United States shall serve its Statement of Position within 45 days of receipt of Wal-Mart's Statement of Position. The United States' Statement of Position shall include, but may not be limited to, any factual data, analysis, or opinion supporting that position and all supporting document relied upon by the United States. Each of the other Plaintiffs may serve a Statement of Position. The United States' Statement of Position shall be binding on Wal-Mart, unless Wal-Mart files a motion for judicial review of the dispute in accordance with Paragraph 62 (Petitions to the Court).

62. Petitions to the Court. In the event that the parties cannot resolve a dispute by informal negotiations as set forth above, the following procedures shall control:

a. Wal-Mart may seek judicial review of the dispute by filing with the Court and serving on the Plaintiffs a motion requesting judicial resolution of the dispute. The motion shall be filed within 45 days of receipt of the United States' Statement of Position set forth in Paragraph 61(b) (Formal Dispute Resolution). The motion shall contain a written statement of Wal-Mart's position on the matter in dispute, including any supporting factual data, analysis, opinion, or documentation, and shall set forth the relief requested and any schedule within which the dispute must be resolved for orderly implementation of this Decree.

b. The United States shall respond to Wal-Mart's motion within 45 days of receipt of the motion, unless the parties stipulate otherwise. Each of the other Plaintiffs may file its own response to Wal-Mart's motion.

c. Wal-Mart may file a reply memorandum within 30 days of receipt of the United States' response.

d. In any dispute under this Paragraph, Wal-Mart shall bear the burden of demonstrating that its position complies with this Decree and the Clean Water Act and

that Wal-Mart is entitled to relief under applicable law. The United States reserves the right to argue that its position is reviewable only on the administrative record and shall be upheld unless arbitrary and capricious or otherwise not in accordance with law. For purposes of this Decree, the administrative record shall comprise the Statements of Position exchanged by the Parties pursuant to Paragraph 61 (Formal Dispute Resolution), including any documents attached to or incorporated by reference in those Statements. Wal-Mart reserves the right to argue that its position is based on a reasonable interpretation of a statute, regulation, or permit, or a reasonable interpretation of this Decree and that the United States' litigation position is not entitled to any deference.

63. Effect on Other Obligations. The invocation of formal dispute resolution procedures under this Section shall not extend, postpone, or affect in any way any obligation of Wal-Mart under this Decree not directly in dispute, unless each Plaintiff agrees in writing or the Court orders otherwise.

64. Computation of Time. The computation of any period of time set forth in this Section VIII shall be governed by Rule 6 of the Federal Rules of Civil Procedure.

#### IX. FORCE MAJEURE

65. Definition of Force Majeure. A "force majeure event" is any event beyond the control of Defendant, its contractors, or any entity controlled by Defendant that delays the performance of any obligation under this Decree despite Defendant's best efforts to fulfill the obligation. "Best efforts" includes anticipating any potential force majeure event and addressing the effects of any such event (a) as it is occurring and (b) after it has occurred, to prevent or minimize any resulting delay to the greatest extent possible. "Force Majeure" does not include Defendant's financial inability to perform any obligation under this Decree. Failure to apply for a required permit or approval or to provide in a timely manner all information required to obtain a permit or approval that is necessary to meet the requirements of this Decree, or failure of Wal-Mart to approve contracts shall not, in any event, be considered Force Majeure events.

66. Required Notification for Force Majeure. Wal-Mart shall notify the Plaintiffs orally and by electronic or facsimile transmission as soon as possible, but not later than 72 hours after the time Wal-Mart first knew of, or in the exercise of reasonable diligence under the circumstances should have known of, any event which might constitute a Force Majeure event. Wal-Mart shall make the oral notification required by this Paragraph by calling Mark Pollins at 202-564-4001 and sending him a message by electronic mail [pollins.mark@epa.gov](mailto:pollins.mark@epa.gov). If Mr. Pollins is not available by telephone, Wal-Mart may satisfy the telephone notice requirement by leaving a message for Mr. Pollins stating that Wal-Mart had called to notify Mr. Pollins pursuant to this Paragraph. The United States may designate an alternative representative to receive oral notification at its discretion by sending Wal-Mart a written designation in accordance with Paragraph 39 (Notification). The written notice Wal-Mart submits pursuant to this Paragraph shall indicate whether Wal-Mart claims that the delay should be excused due to a Force Majeure event. The notice shall describe in detail the basis for Wal-Mart's contention that it experienced a Force Majeure delay, the anticipated length of the delay, the precise cause or causes of the delay, the measures taken or to be taken to prevent or minimize the delay, and the timetable by which those measures will be implemented. Wal-Mart shall adopt all reasonable measures to avoid or minimize such delay. Failure to so notify the Plaintiffs shall render this Section IX (Force Majeure) void and of no effect as to the event in question, and shall be a waiver of Wal-Mart's right to obtain an extension of time for its obligations based on such event.

67. Procedures for Extension. If the United States finds that a delay in performance is, or was, caused by a Force Majeure event, Plaintiffs shall extend the time for performance, in writing, for a period to compensate for the delay resulting from such event, and stipulated penalties shall not be due for such a period. In proceedings on any dispute regarding a delay in performance, the dispute resolution provisions of Section VIII (Dispute Resolution) shall apply, and Wal-Mart shall have the burden of proving that the delay is, or was, caused by a Force

Majeure event and that the amount of additional time requested is necessary to compensate for that event.

68. Effect on Other Obligations. Compliance with a requirement of this Decree shall not by itself constitute compliance with any other requirement. An extension of one compliance date based on a particular event shall not automatically extend any other compliance date. Wal-Mart shall make an individual showing of proof regarding the cause of each delayed incremental step or other requirement for which an extension is sought.

#### X. SUPPLEMENTAL ENVIRONMENTAL PROJECT

69. Performance of Supplemental Environmental Projects. Wal-Mart shall spend \$250,000 to implement fully a Supplemental Environmental Project in accordance with the terms of this Paragraph. The Supplemental Environmental Project shall consist of the purchase of wetlands, riparian habitat, or vernal pools located in California, Colorado, Delaware, Michigan, New Jersey, South Dakota, Texas, Tennessee or Utah, protection of the purchased land through the application of a Conservation Easement, and donation of the land to an organization or other person capable of maintaining the land and enforcing the Conservation Easement. This project is intended to reduce or mitigate any adverse impact to the environment that may have been caused by the violations alleged in the Plaintiffs' Complaints.

a. Within 365 days of entry of this Decree, Wal-Mart shall submit a proposal to Plaintiffs that identifies wetlands, riparian habitat, or vernal pools located in California, Colorado, Delaware, Michigan, New Jersey, South Dakota, Texas, Tennessee or Utah that Wal-Mart proposes to purchase and protect. The proposal shall identify (i) the location and nature of the property, including a delineation of any wetlands in accordance with the 1987 Delineation Manual issued by the U.S. Army Corps of Engineers; (ii) the price per acre; (iii) the number of acres; (iv) the proposed recipient of the property; (v) the schedule for purchasing, protecting, and donating the land; and (vi)

the proposed Conservation Easement to be placed on the property, which must meet the requirements of subparagraph (b) of this Paragraph.

b. The proposed Conservation Easement shall be written to assure that the property will be retained forever predominantly in its natural condition, with certain adaptations for public use, and to prevent any use of the property that will significantly impair or interfere with the conservation and public enjoyment and education values of the property. Wal-Mart shall confine the use of the property to such activities as are consistent with the conservation purposes of the Easement, including, without limitation, habitat enhancement and conservation, public use, environmental research and monitoring, and education. Such a covenant may permit passive recreational uses of the property incidental to and not in conflict with the purposes of the SEP required under this Consent Decree, such as hunting, hiking and biking trails and a low-impact access road.

c. EPA shall review and approve Wal-Mart's proposed plan submitted pursuant to subparagraph (a) of this Paragraph if the plan provides for (i) expenditure of at least the full \$250,000 on the purchase of suitable property; (ii) contains a Conservation Easement that meets the requirements of subparagraph (b) of this Paragraph; and (iii) provides for the timely transfer of the property to an organization or other person capable of maintaining the land and enforcing the Conservation Easement. If EPA disapproves the plan, Wal-Mart shall correct the plan as directed by EPA or invoke the procedures set forth in Section VIII (Dispute Resolution)

d. Upon EPA approval of the plan, Wal-Mart shall implement the plan in accordance with its terms.

70. Public Statements Regarding the Supplemental Environmental Project. Wal-Mart agrees that any written statement, press release, or public speech making reference to the supplemental environmental projects required by Paragraph 69 (Performance of Supplemental Environmental Projects) shall include the following language: "This Project was undertaken in

connection with the settlement of an enforcement action taken by the United States Environmental Protection Agency for alleged violations of the Clean Water Act, as amended, 33 U.S.C. §§ 1251-1387.”

71. Completion Report. Within 60 days after the completion of the Supplemental Environmental Project, Wal-Mart shall submit separate Completion Report to EPA. The Completion Reports shall contain the following information:

(a) a description of the SEP as implemented, including the dates during which the project was implemented;

(b) itemized costs, documented by copies of purchase orders and receipts or canceled checks;

(c) a certification of completion stating that the SEP has been performed and satisfactorily completed pursuant to the provisions of this Decree; and

(d) a description of the environmental and public health benefits resulting from implementation of the SEP.

72. EPA Response to Completion Report.

a. Following receipt of the Completion Report, EPA will do one of the following:

(i) provide written notice that it accepts the SEP Completion Report;

(ii) reject the SEP Completion Report and provide written notice to Wal-Mart of any deficiencies, and grant Wal-Mart an additional 30 days, or such other time as EPA may in its sole and unreviewable discretion conclude is reasonable, in which to correct any deficiencies; or

(iii) reject the Completion Report and provide written notice to Wal-Mart of its failure to satisfactorily complete the supplemental environmental project in accordance with the requirements of this Decree, and seek stipulated penalties in accordance with Section VII (Stipulated Penalties).



b. Wal-Mart may invoke the procedures set forth in Section VIII (Dispute Resolution) to dispute EPA's determination the supplemental environmental project was not satisfactorily completed in accordance with the requirements of this Decree.

73. Wal-Mart's Certification of Eligibility. By entering into this Consent Decree, Wal-Mart certifies that it is not required to develop or perform the supplemental environmental project by any federal, state, or local law or regulation; nor is Wal-Mart required to perform or develop the supplemental environmental project as part of an existing settlement or order in another legal action, or as injunctive relief in this or any other judicial or administrative case or action. Wal-Mart further certifies that it has not received, and is not presently negotiating to receive, credit in any other enforcement action for the supplemental environmental project.

SO ORDERED THIS \_\_\_\_\_ DAY OF \_\_\_\_\_, 2004

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UNITED STATES DISTRICT JUDGE

WE HEREBY CONSENT to the entry of the Decree in United States, et al. v. Wal-Mart,  
subject to the public notice requirements of 28 C.F.R. §50.7.

FOR THE UNITED STATES OF AMERICA:

Date: \_\_\_\_\_

\_\_\_\_\_  
THOMAS L. SANSONETTI  
Assistant Attorney General  
Environment and Natural Resources Division  
U.S. Department of Justice  
Washington, DC 20530

Date: \_\_\_\_\_

\_\_\_\_\_  
SARAH D. HIMMELHOCH  
Senior Counsel  
Environmental Enforcement Section  
Environment and Natural Resources Division  
U.S. Department of Justice  
P.O. Box 7611  
Washington, DC 20044-7611  
(202) 514-0180

WE HEREBY CONSENT to the entry of the Decree in United States, et al. v. Wal-Mart,  
subject to the public notice requirements of 28 C.F.R. §50.7.

FOR THE UNITED STATES OF AMERICA:

Date: \_\_\_\_\_

\_\_\_\_\_  
PHYLLIS P. HARRIS  
Acting Assistant Administrator  
Office of Enforcement and Compliance Assurance  
Ariel Rios Building, 2241 A  
1200 Pennsylvania Avenue, N. W.  
Washington, DC 20460

Date: \_\_\_\_\_

\_\_\_\_\_  
LAUREN V. KABLER  
Attorney-Advisor  
U.S. EPA, OECA/ORE/WED  
Ariel Rios Building South  
1200 Pennsylvania Avenue, N.W.  
Mailstop 2243A  
Washington, DC 20460  
202-564-4052  
kabler.lauren@epa.gov

WE HEREBY CONSENT to the entry of the Decree in United States, et al. v. Wal-Mart,  
subject to the public notice requirements of 28 C.F.R. §50.7.

FOR THE UNITED STATES OF AMERICA:

Date: \_\_\_\_\_

\_\_\_\_\_  
CAROL RUSHIN  
Assistant Regional Administrator  
Office of Enforcement, Compliance, and Environmental  
Justice  
U.S. Environmental Protection Agency, Region VIII  
999 18th Street  
Denver, Colorado 80202

Date: \_\_\_\_\_

\_\_\_\_\_  
MICHAEL RISNER  
Director, Legal Enforcement Program  
Office of Enforcement, Compliance, and Environmental  
Justice  
U.S. Environmental Protection Agency, Region VIII  
999 18th Street  
Denver, Colorado 80202

Date: \_\_\_\_\_

\_\_\_\_\_  
MARC WEINER  
Enforcement Attorney  
Office of Enforcement, Compliance, and Environmental  
Justice  
U.S. Environmental Protection Agency, Region VIII  
999 18th Street  
Denver, Colorado 80202

WE HEREBY CONSENT to the entry of the Decree in United States, et al. v. Wal-Mart,  
subject to the public notice requirements of 28 C.F.R. §50.7.

FOR THE STATE OF TENNESSEE:

\_\_\_\_\_  
Date

\_\_\_\_\_  
PHILLIP R. HILLIARD  
Assistant Attorney General  
Office of the Attorney General & Reporter  
State of Tennessee  
425 Fifth Avenue North  
Nashville, Tennessee 37243  
(615) 741-4612

WE HEREBY CONSENT to the entry of the Decree in United States, et al. v. Wal-Mart,  
subject to the public notice requirements of 28 C.F.R. §50.7.

FOR THE STATE OF UTAH:

\_\_\_\_\_  
Date

\_\_\_\_\_  
DON A. OSTLER, P.E.  
Executive Secretary  
Utah Water Quality Board

WE HEREBY CONSENT to the entry of this Decree in United States, et al. v. Wal-Mart.  
FOR DEFENDANT WAL-MART STORES, INC.,

Date: \_\_\_\_\_

\_\_\_\_\_  
JONATHAN S. SANDEEN  
Wal-Mart Stores, Inc.  
Vice President,  
Design and Construction  
Wal-Mart Stores, Inc.

Date: \_\_\_\_\_

\_\_\_\_\_  
TROY A. EID  
Greenberg Traurig, LLP  
The Tabor Center  
1200 Seventeenth Street  
Twenty-Fourth Floor  
Denver, Colorado 80202

Attorney for Wal-Mart Stores, Inc.

Agent Authorized to Accept Service on Behalf of Above-Signed Party:

Typed Name: \_\_\_\_\_

Title: \_\_\_\_\_

Address: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

## **Appendix 1: Inspection Report Form**



# Daily Storm Water Inspection Report

Project Name: \_\_\_\_\_

Project Number: \_\_\_\_\_

Inspector Name & Title: \_\_\_\_\_

Date/Time of Inspection: \_\_\_\_\_

Date of Most Recent Storm Event > .5": \_\_\_\_\_

Construction Stage (circle all that apply):

Clearing/Grubbing  
Building Construction

Rough Grading  
Final Grading

Infrastructure  
Final Stabilization

Type of Control	Describe Status and Identify Problems or Maintenance Needs	Problem Addressed (date and description of corrective action)
<b>Structural:</b>		
<i>Silt Fence</i>		
<i>Storm Drain Inlet Protection</i>		
<i>Sedimentation Pond</i>		
<i>Vehicle Track-Out</i>		

<b><i>Other Structural Controls</i></b>		
<b>Non-Structural:</b>		
<i>Street Cleaning</i>		
<i>Good Housekeeping &amp; Waste Disposal Practices</i>		
<i>Equipment Wash &amp; Maintenance Area</i>		
<i>Concrete Washout Area</i>		
<b>Stabilization:</b>		
<i>Seeding, Mulching, Geotextile, Sod</i>		

<b>Miscellaneous:</b>	
<i>List Revisions to SWPPP to Reflect BMP Additions or Modifications</i>	

I certify under penalty of perjury that I personally conducted this inspection and prepared this inspection report. Based upon my observations during the inspection, I certify that the information in this inspection report is true, accurate, and complete. I am aware that there are significant penalties for perjury, including fines and imprisonment for knowing violations.

\_\_\_\_\_  
Inspector's Signature

\_\_\_\_\_  
Date

I certify under penalty of perjury that I personally observed this inspection. All corrective actions noted as necessary on this inspection report have been fully and timely completed. Based upon my observations during the inspection, I certify that the information in this inspection report is true, accurate, and complete. In addition, I have reviewed the nine inspection reports previous to this one and I certify that all corrective actions noted as necessary have been fully and timely completed. I am aware that there are significant penalties for perjury, including fines and imprisonment for knowing violations.

\_\_\_\_\_  
Compliance Officer's Signature (every 10th inspection)

\_\_\_\_\_  
Date

I certify under penalty of perjury that I personally observed this inspection and that all corrective actions noted as necessary on this inspection report have been fully and timely completed. Based upon my observations during the inspection, I certify that the information in this inspection report is true, accurate, and complete. In addition, I have reviewed the [insert number of inspection reports] \_\_ inspection reports previous to this one and I certify that all corrective actions noted as necessary have been fully and timely completed. I am aware that there are significant penalties for perjury, including fines and imprisonment for knowing violations.

\_\_\_\_\_  
Construction Manager's Signature  
(every monthly inspection)

\_\_\_\_\_  
Date